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AN ACT

RELATING TO REAL ESTATE; CLARIFYING THE RESPONSIBILITIES OF
REAL ESTATE BROKERS AND LICENSEES TO CLIENTS AND CUSTOMERS;
AMENDING AND REPEALING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 61-29-2 NMSA 1978 (being Laws 1999,
Chapter 127, Section 1) is amended to read:

"61-29-2. DEFINITIONS AND EXCEPTIONS. --

A. As used in Chapter 61, Article 29 NMSA 1978:

(1) "agency relationship" or "brokerage
relationship" means the legal or contractual relationship
between a person and a brokerage in a real estate transaction
subject to the jurisdiction of the commission;

(2) "broker" or "qualifying broker" means a
person who for compensation or other consideration from
another:

(a) lists, sells or offers to sell real
estate; buys or offers to buy real estate; or negotiates the
purchase, sale or exchange of real estate or options on real
estate;

(b) leases, rents or auctions or offers
to lease, rent or auction real estate;

(c) advertises or holds himself out as
being engaged in the business of buying, selling, exchanging,

1 renting, leasing, auctioning or dealing with options on real
2 estate for others as a whole or partial vocation; or

3 (d) engages in the business of charging
4 an advance fee or contracting for collection of a fee in
5 connection with a contract under which he undertakes
6 primarily to promote the sale of real estate through its
7 listing in a publication issued primarily for that purpose or
8 for the purpose of referral of information concerning real
9 estate to brokers;

10 (3) "brokerage" means a licensed qualifying
11 broker, the licensed real estate business represented by the
12 broker and its affiliated licensees;

13 (4) "client" means a buyer, seller, landlord
14 or tenant who has entered into an express written agreement
15 with a brokerage for real estate services subject to the
16 jurisdiction of the commission;

17 (5) "commission" means the New Mexico real
18 estate commission;

19 (6) "customer" means a buyer, seller,
20 landlord or tenant who uses real estate services without
21 entering into an express written agreement with a brokerage
22 subject to the jurisdiction of the commission;

23 (7) "license" means a real estate broker's
24 license or a real estate salesperson's license issued by the
25 commission;

1 (8) "licensee" means a person holding a
2 valid real estate license subject to the jurisdiction of the
3 commission;

4 (9) "real estate" means land, improvements,
5 leaseholds and other interests in real property that are less
6 than a fee simple ownership interest, whether tangible or
7 intangible; and

8 (10) "real estate salesperson" means a
9 person who for compensation or other valuable consideration
10 is associated with or engaged under contract by a broker to
11 participate in an activity described in Subparagraphs (a)
12 through (d) of Paragraph (2) of this subsection or to carry
13 on the broker's business as a whole or partial vocation.

14 B. A single act of a person in performing or
15 attempting to perform an activity described in Subparagraphs
16 (a) through (d) of Paragraph (2) of Subsection A of this
17 section makes the person a broker. A single act of a person
18 in performing or attempting to perform an activity described
19 in Paragraph (10) of Subsection A of this section makes the
20 person a real estate salesperson.

21 C. The provisions of Chapter 61, Article 29 NMSA
22 1978 do not apply to:

23 (1) a person who as owner or lessor performs
24 any of the activities included in this section with reference
25 to property owned or leased by him, the employees of the

1 owner or lessor or the employees of a broker acting on behalf
2 of the owner or lessor, with respect to the property owned or
3 leased, if the acts are performed in the regular course of or
4 incident to the management of the property and the
5 investments, except when the sale or offering for sale or the
6 lease or offering for lease of the property constitutes a
7 subdivision containing one hundred or more parcels;

8 (2) isolated or sporadic transactions not
9 exceeding two transactions annually in which a person acts as
10 attorney-in-fact under a duly executed power of attorney
11 delivered by an owner authorizing the person to finally
12 consummate and to perform under any contract the sale,
13 leasing or exchange of real estate on behalf of the owner;
14 and the owner or attorney-in-fact has not used a power of
15 attorney for the purpose of evading the provisions of Chapter
16 61, Article 29 NMSA 1978;

17 (3) transactions in which a person acts as
18 attorney-in-fact under a duly executed power of attorney
19 delivered by an owner related to the attorney-in-fact within
20 the fourth degree of consanguinity or closer, authorizing the
21 person to finally consummate and to perform under any
22 contract for the sale, leasing or exchange of real estate on
23 behalf of the owner;

24 (4) the services rendered by an attorney at
25 law in the performance of his duties as an attorney at law;

1 (5) a person acting in the capacity of a
2 receiver, trustee in bankruptcy, administrator or executor, a
3 person selling real estate pursuant to an order of any court
4 or a trustee acting under a trust agreement, deed of trust or
5 will or the regular salaried employee of a trustee;

6 (6) the activities of a salaried employee of
7 a governmental agency acting within the scope of his
8 employment; or

9 (7) persons who deal exclusively in mineral
10 leases or the sale or purchase of mineral rights or royalties
11 in any case in which the fee to the land or the surface
12 rights are in no way involved in the transaction. "

13 Section 2. Section 61-29-10.1 NMSA 1978 (being Laws
14 1999, Chapter 127, Section 2) is amended to read:

15 "61-29-10.1. BROKERAGE RELATIONSHIPS-- CREATION. --

16 A. For all regulated real estate transactions
17 first executed on or after January 1, 2000, no agency
18 relationship between a buyer, seller, landlord or tenant and
19 a brokerage shall exist unless the buyer, seller, landlord or
20 tenant and the brokerage agree, in writing, to the agency
21 relationship. No type of agency relationship may be assumed
22 by a buyer, seller, landlord, tenant or licensee, or created
23 orally or by implication.

24 B. A brokerage may provide real estate services to
25 a client pursuant to an express written agreement that does

1 not create an agency relationship and no agency duties will
2 be imposed on the brokerage.

3 C. A brokerage may provide real estate services to
4 a customer without entering into an express written agreement
5 and without creating an agency relationship and no agency
6 duties will be imposed on the brokerage.

7 D. The commission shall promulgate rules governing
8 the rights of clients or customers and the rights,
9 responsibilities and duties of a brokerage in those brokerage
10 relationships that are subject to the jurisdiction of the
11 commission. "

12 Section 3. Section 61-29-10.2 NMSA 1978 (being Laws
13 1999, Chapter 127, Section 3) is amended to read:

14 "61-29-10.2. LICENSEE'S DUTIES--DISCLOSURE. --

15 A. A licensee shall give to a prospective buyer,
16 seller, landlord or tenant, at the time when the parties
17 enter into an express written agreement, a list of the
18 licensee's duties that are in accordance with requirements
19 established by the commission.

20 B. Licensees shall perform all duties that are
21 established for licensees by the commission. "

22 Section 4. REPEAL. --Section 61-29-10.3 NMSA 1978 (being
23 Laws 1999, Chapter 127, Section 4, as amended) is repealed.

24 Section 5. EFFECTIVE DATE. --The effective date of the
25 provisions of this act is January 1, 2004. _____